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ity where a convict was injured through negligence of a state supervisor while working on the streets (a proprietary function to which liability ordinarily attaches).[36]

An investigation of other jurisdictions reveals cases of fellow-prisoner injuries analagous to the two principal cases, and in no instance has a city been held liable for the negligence of its agents in not regulating prisoners more carefully.[37] However, where suit has been against the individual bonded officer, there has been recovery in nearly all cases in which the officer knew or should have known of the danger to the prisoner.[38] Thus the knowledge rule has extended not only to "kangaroo court" and direct assault cases, but to a situation where a prisoner caught small-pox due to the jailer's failure to isolate an inmate known to be diseased,[39] and to a situation where the sheriff knew of an inmate's wounds but failed to secure medical aid.[40]

Thus North Carolina accords with the weight of authority in granting recovery when the sheriff is defendant and denying it when the town is defendant, on substantially identical fact-situations. From a social point of view the result reached in the Parks case is palpably undesirable, yet remedy lies only in a statutory imposition of liability on town and county for negligence in the exercise of its "governmental" functions.

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Workmen's Compensation—Injury from Personal Assault as Arising Out of Employment.

While at work, *P* was jeeringly taunted by his supervisor until he retaliated with abusive language. Thereupon the supervisor struck and injured *P*. Recovery was allowed under Workman's Compensation Act.[1]

Admittedly the injury occurred in the "course of employment." But it is highly controversial whether an assault flowing from purely personal bickering may be said to "arise out of employment." Difficulty inheres in the necessity of establishing a sufficient causal connection between the injury and the employment.[2]

[36] Clodfelter v. State, 86 N. C. 51 (1882).
[37] In each case the jailer had reason to anticipate the danger from the prisoner, but liability was denied against the city on the basis of immunity to suit for injuries arising out of governmental functions.
[38] See note 31, *supra*.
[39] Hunt v. Rawton, 14 Okla. 181, 288 Pac. 342 (1930).
[40] Moxley v. Roberts, 43 S. W. 482 (Ky. 1897).

[1] Hartford Accident & Indemnity Co. v. Cardillo, 112 F. (2d) 11 (App. D. C. 1940).
[2] Coronado Beach Co. v. Pillsbury, 172 Cal. 682, 158 Pac. 212 (1916); Connelly v. Samaritan Hospital, 259 N. Y. 137, 181 N. E. 76 (1932).

The potential flexibility of the phrase "out of employment" has been wielded with increasing liberality in favor of injured employees.[3] Where employment leads to passage along public streets, injuries from vehicles,[4] slipping or tripping,[5] falling objects,[6] and explosions[7] are compensable. Justification is found in the forced exposure to the risks of the street, even though such risks are common to the public and not peculiar to the employee. Recovery is further allowed where presence on the street is casual and collateral to employment, as where occasioned by telephoning[8] or seeking a toilet.[9] Narrower construction occurs in a North Carolina holding that a mad dog bite was not compensable although the bitten employee was at his post of work.[10]

Illustration of the liberal trend occurs also in cases involving accidental shooting. Compensable injury occurred to a traveling representative shot on a station platform,[11] to a janitor shot while cleaning steps,[12] and to a waiter by a gun being cleaned by a policeman.[13] In such cases North Carolina, however, holds fast to the moderate view, and does not allow compensation unless the nature of the employment subjects the employee to the particular hazard. Hence no recovery was allowed an employee shot by a boy hunting sparrows.[14]

"Horseplay" cases reveal varying degrees of liberality. Most jurisdictions allow recovery where the injured worker was a non-participant;[15] some allow recovery despite the injured worker's participation

[3] McLaughlin v. Davies Lumber Co., 220 Ala. 440, 125 So. 608 (1929); Billiter, Miller & McClure v. Hickman, 247 Ky. 211, 56 S. W. (2d) 1002 (1933); Industrial Comm. of Ohio v. Weigandt, 102 Ohio St. 1, 130 N. E. 38 (1921).

[4] Western Pacific R. R. v. Industrial Accident Comm. of Cal., 193 Cal. 413, 224 Pac. 754 (1925); Cook's Case, 243 Mass. 572, 137 N. E. 733 (1923).

[5] McCullough v. Pittsburgh Glass Co., 107 Conn. 164, 140 Atl. 114 (1927); New Amsterdam Casualty Co. v. Hoage, 62 F. (2d) 468 (App. D. C. 1932); Redner v. K. C. Faber & Son Co., 223 N. Y. 379, 119 N. E. 482 (1918).

[6] Mahold v. Thompson-Starrett Co., 134 Minn. 113, 158 N. W. 913 (1916).

[7] Kozdeba v. People's Gas Light & Coke Co., 232 Ill. App. 495 (1924); Roberts v. J. F. Newcombe and Co., 201 App. Div. 759, 195, N. Y. Supp. 405 (3d Dep't 1922).

[8] Mueller Const. Co. v. Industrial Brd., 283 Ill. 148, 118 N. E. 1028 (1918).

[9] Zabriskie v. Erie R. R., 86 N. J. L. 266, 92 Atl. 384 (1914).

[10] Plemmons v. White's Service, 213 N. C. 148, 195 S. E. 370 (1938); Bodenheimer v. Ragan, 3 N. C. I. C. 95 (1931). But see Katz v. Radans, 232 N. Y. 420, 134 N. E. 330 (1922) (Employee stabbed by insane man while filling employer's truck).

[11] Frigidaire Corp. v. Industrial Accident Comm., 103 Cal. App. 27, 283 Pac. 974 (1929).

[12] Greenberg v. Voit, 250 N. Y. 543, 116 N. E. 318 (1929).

[13] Entrocut v. Paramount Bakery & Restaurant Co., 222 App. Div. 844, 226 N. Y. Supp. 808 (3rd Dep't 1928).

[14] Bain v. Travora Mfg. Co., 203 N. C. 466, 166 S. E. 301 (1932); Whitley v. N. C. State Highway Comm., 201 N. C. 539, 160 S. E. 827 (1931) (Claimant shot by hunter while working on employer's truck). Contra: Boris Const. Co. v. Haywood, 214 Ala. 162, 106 So. 799 (1925) (Compensation allowed in identical case).

[15] Leonbruno v. Champlain Silk Mills, 229 N. Y. 470, 128 N. E. 711 (1920);

provided such "horseplay" was a common occurrence and so known to the employer.[16] A few permit compensation even where the "horseplay" was neither customary nor within the employer's knowledge.[17] These latter decisions lean heavily upon a doctrine that outbursts of "horseplay" are inevitable by-products of continuous human association and accordingly "arise out of employment." Such a rationale is succinctly put by Judge Cardozo: "The claimant's presence in the factory in association with other workmen involved exposure to risk of injury from the careless acts of those about him. . . . Whatever men and boys will do, when gathering together in such surroundings, at all events if it is something reasonably expected was one of the perils of his service."[18]

Where an employee suffers a wilful assault from either a fellow workman[19] or a third person,[20] compensation is contingent upon whether the altercation bore any relation to the employment. North Carolina adheres to this view.[21] Other cases have anticipated the principal decision and allowed recovery for assaults unrelated to the employment, and even where the injured claimant was guilty of provocation. Injury was held to have risen "out of employment", where a co-worker made a sudden assault merely to satisfy personal spleen,[22] where the claimant was shot by an employee who returned intoxicated

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Chambers v. Union Oil Co. Inc., 199 N. C. 28, 163 S. E. 594 (1930); Badger Furniture Co. v. Industrial Comm., 195 Wis. 134, 217 N. E. 734 (1928); Notes (1921) 13 A. L. R. 540, (1925) 36 A. L. R. 469, (1926) 43 A. L. R. 492.

[16] Kokomo Steel & Wire Co. v. Irick, 80 Ind. App. 610, 141 N. E. 769 (1923); Anderson v. Kerr State Industrial Comm., 155 Okla. 137, 7 P. (2d) 902 (1932); Note (1930) 9 N. C. L. REV. 105.

[17] East Ohio Gas Co. v. Coe, 420 Ohio App. 610, 182 N. E. 123 (1923) (Claimant in jest took ruler from co-worker, and struggle followed resulting in fatal injury); Brown v. Vacuum Oil Co., 171 La. 707, 132 So. 117 (1930) (Claimant sprinkled a co-worker in fun; latter attempted to take hose and injured former); Note (1932) 46 HARV. L. REV. 166.

[18] Leonbruno v. Champlain Silk Mills, 229 N. Y. 470, 471, 128 N. E. 711, 712 (1920).

[19] Globe Indemnity Co. v. Industrial Accident Comm., 193 Cal. 470, 225 Pac. 273 (1924); Little v. Atlas Drop-Forge Co., 221 Mich. 604, 192 N. W. 619 (1923); Janchimsky v. E. U. Bliss Co., 198 App. Div. 8, 189 N. Y. Supp. 154 (3d Dep't 1923); Brown, *Arising out of Employment* (1932) 8 WIS. L. REV. 217; Note (1933) B. U. L. REV. 184; Note (1936) 8 ROCKY MT. L. REV. 301.

[20] *Ex Parte* Terry, 211 Ala. 418, 100 So. 768 (1924); Clark v. Industrial Comm., 356 Ill. 641, 191 N. E. 209 (1934); Rosmuth American Radiator Co., 200 App. Div. 207, 193 N. Y. Supp. 769 (3d Dep't 1922).

[21] Conrad v. Cook-Lewis Foundry Co., 198 N. C. 723, 153 S. E. 266 (1930); Winberry v. Farley Stores, Inc., 204 N. C. 79, 167 S. E. 476 (1933); Wilson v. Boyd & Goforth, 207 N. C. 344, 177 S. E. 178 (1934).

[22] Grosberg v. H. and H. Taxi Corp., 250 App. Div. 804, 294 N. Y. Supp. 201 (3d Dep't 1937) (Claimant accused of being a chiseler and assaulted by fellow employee); Ferguson v. Cady-McFarland Gravel Co., 156 La. 871, 101 So. 248 (1924) (Claimant while in stooping position was suddenly struck on head by a co-worker). In both cases there is a strong indication that the assault was not due merely to personal ill-will but originated from the work.

while off duty;[23] where claimant was stabbed by an insane stranger;[24] and where the claimant provoked an assault by abusive language.[25] Yet where an employee was injured in an assault which he initiated as aggressor, recovery was denied.[26] None of the cases extend to the situation where a quarrel has its beginnings entirely outside of and disassociated from work, and employment only affords an opportunity for previously aroused animosity to break into physical violence. However, the reasoning of the more liberal courts appears sufficiently comprehensive to include even such an eventuality.

Obviously the instant decision departs from the weight of precedent and widens the scope of the formula, "out of employment." The court repudiates the time-honored necessity that the act be in line of duty, or forward the work, or create a special risk; instead it finds sufficient causal connection in the perils of human association. It reasons that "in bringing men together, work brings these qualities together, caused friction between them, creates occasions for lapses into carelessness, for fun making and emotional flareup. These expressions of human nature are incidents inseparable from working together." Inescapeably this reflects the alloy of legal reasoning with judicial notion of desirability. It veers sharply toward the implication that any injury sustained during working hours may sufficiently "arise out of employment" regardless of the absence of a legalistic causal relation.[27]

Such a trend may profitably be examined in the light of the evils sought to be corrected by Workman's Compensation legislation. Industry was to bear the reasonable cost of human injury found to be inseparable from and necessarily attributable to its functioning.[28] Absolute liability was never sought to be imposed,[29] and such attempt would hazard constitutional rejection for the Supreme Court has declared: "It may be assumed that where an accident is in no matter related to

[23] Wakefield v. World Telegram, 249 App. Div. 884, 292 N. Y. Supp. 588 (3d Dep't 1937); *cf.* Wilson v. Boyd & Goforth, 207 N. C. 344, 177 S. E. 178 (1934) (Claimant being chased by drunken co-worker fell and sustained injuries).

[24] Hartford Accident & Indemnity Co. v. Hoage, 85 F. (2d) 417 (App. D. C. 1936) (Seemingly compensation allowed solely because claimant was in "course of employment").

[25] Keybee v. Woodward-Walker Lumber Co., La., 147 So. 830 (1933); *cf.* Carbone v. Loft, 219 N. Y. 646, 114 N. E. 1062 (1916).

[26] Fazio v. Cardillo, 109 F. (2d) 835 (App. D. C. 1940).

[27] A few statutes merely require that the injury occur "in the course of employment"; others require that the injury arise "out of *or* in the course of employment." Yet such statutes have received only a slight difference in treatment from those containing a dual requirement. DODD, ADMINISTRATION OF WORKMEN'S COMPENSATION (1936) 680-683.

[28] See Newman v. Industrial Comm., 203 Wis. 358, 360, 234 N. W. 495 (1931).

[29] Mueller Const. Co. v. Industrial Board, 283 Ill. 148, 118 N. E. 1028 (1918); *cf.* dissenting opinion of Mr. Justice McKenna in Arizona Copper Co. v. Hammer, 250 U. S. 400, 39 Sup. Ct. 553, 63 L. ed. 1058 (1919).

the employment, an attempt to make the employer liable would be so clearly unreasonable and arbitrary as to subject it to the ban of the constitution.[80] The instant decision is dangerously far-reaching in its implications. A scrutiny of the aims underlying Workman's Compensation legislation may well prompt other courts to refuse to follow.

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[80] Cudahy Packing Co. v. Parramore, 263 U. S. 418, 423, 44 Sup. Ct. 153, 154, 68 L. ed. 366 (1923).